

# EXHIBIT 5

IN THE UNITED STATES BANKRUPTCY COURT  
FOR THE DISTRICT OF DELAWARE

IN RE: ) Chapter 11  
 )  
W. R. GRACE & CO., ) Case No. 01-01139 JKF  
et al )  
 )  
Debtors )

Deposition of RICHARD CHARLES FINKE  
taken pursuant to notice at the law offices of  
Drinker, Biddle & Reath, LLP, 1100 North Market  
Street, Suite 1000, Wilmington, Delaware,  
beginning at 9:35 a.m., on Monday, March 30,  
2009, before Allen S. Blank, Registered Merit  
Reporter and Notary Public.

APPEARANCES:

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For - Debtors

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W.R. Grace &amp; Co., et al.

Page 2	Page 4
<p>1 APPEARANCES: CONTINUED 2 JOHN W. KOZYAK, ESQUIRE 3 KOZYAK TROPIN THROCKMORTON 4 2525 Ponce de Leon, 9th Floor 5 Miami, FL 33134 6 7 For - Anderson Memorial Hospital 8 9 MATTHEW I. KRAMER, ESQUIRE 10 BILZIN, SUMBERG, BAENA, PRICE 11 &amp; AXELROD, LLP 12 200 S. Biscayne Boulevard, Suite 2500 13 Miami, FL 33131-5340 14 15 For - PD Committee 16 17 ARLENE G. KRIEGER, ESQUIRE 18 STROOCK &amp; STROOCK &amp; LAVAN, LLP 19 180 Maiden Lane 20 New York, NY 10038-4982 21 For - Official Committee of 22 Unsecured Creditors 23 24 ALAN B. RICH, ESQUIRE Elm Place 1401 Elm Street, Suite 4620 Dallas, TX 75202 For - PD FCR ELISA ALCABES, ESQUIRE SIMPSON, THACHER &amp; BARTLETT, LLP 425 Lexington Avenue New York, NY 10017-3954 For - Travelers Casualty &amp; Surety Company KATHLEEN A. ORR, ESQUIRE ORRICK, HERRINGTON &amp; SUTLIFF, LLP 1152 15th Street, N.W. Washington, D.C. 20005 For - David Anstern, Asbestos PI</p>	<p>1 APPEARANCES: CONTINUED 2 ANDREW F. CRAIG, ESQUIRE (VIA TELEPHONE) 3 CUYLER BURK, LLP 4 Parsippany Corporate Center 5 Four Century Drive 6 Parsippany, NJ 07054 7 For - Allstate Insurance Company 8 LAURA M. STOVER, ESQUIRE (VIA TELEPHONE) 9 NEARHOOD LAW OFFICES 10 7537 E. McDonald Drive 11 Scottsdale, AZ 85250 12 - and - 13 GABRIELLA V. CELLAROSI, ESQUIRE 14 (VIA TELEPHONE) 15 ECKERT SEAMANS 16 1747 Pennsylvania Avenue, N.W. 17 Suite 200 18 Washington, D.C. 20006-4604 19 For - Maryland Casualty Insurance 20 Company and Zurich 21 Insurance Company 22 ***** 23 RICHARD CHARLES FINKE, 24 the deponent herein, having first been duly sworn on oath, was examined and testified as follows: EXAMINATION BY MR. SPEIGHTS: Q. Would you state your full name, please, sir? A. Yes. Richard Charles Finke, F-i-n-k-e. Q. Mr. Finke, who are you employed by?</p>
Page 3	Page 5
<p>1 APPEARANCES: CONTINUED 2 MICHAEL F. BROWN, ESQUIRE 3 DRINKER, BIDDLE &amp; REATH, LLP 4 One Logan Square 5 18th and Cherry Streets 6 Philadelphia, PA 19103-6996 7 For - Government Employees Insurance 8 Company, Columbia Insurance, 9 One Beacon America Insurance 10 Company and Seaton Insurance 11 Company 12 SHANNON L. GRIFFIN, ESQUIRE 13 OMELVENY &amp; MYERS, LLP 14 Times Square Tower 15 7 Times Square 16 New York, NY 10036 17 For - Arrowood Indemnity Company, 18 f/k/a Royal Indemnity Co. 19 20 MARNIE E. SIMON, ESQUIRE 21 STEVENS &amp; LEE 22 1818 Market Street, 29th Floor 23 Philadelphia, PA 19103-1702 24 - and - JOHN D. DEMMY, ESQUIRE (VIA TELEPHONE) STEVENS &amp; LEE 1105 North Market Street, 7th Floor Wilmington, DE 19801 For - Fireman's Fund Insurance Company SHAYNE W. SPENCER, ESQUIRE ELIZABETH DeCRISTOFARO, ESQUIRE (VIA TELEPHONE) FORD, MARRIN, ESPOSITO, WITMEYER &amp; GLESER, LLP Wall Street Plaza New York, NY 10005-1875 For - CNA Insurance Company</p>	<p>1 A. W. R. Grace &amp; Co. 2 Q. How long have you been employed by Grace? 3 A. Twenty years. 4 Q. Can you tell me the approximate date you 5 started? 6 A. No. I can tell you the exact date I 7 started. February 27, 1989. 8 Q. Who do you presently report to? 9 A. Mark Shelnitz, general counsel of W. R. 10 Grace. 11 Q. How long have you reported to 12 Mr. Shelnitz? 13 A. Since he became general counsel, which 14 was three or four years ago. I forget how long. 15 Q. Does April 2005 seem about right? 16 A. It seems about right, yes. 17 Q. Would you give me the positions you have 18 held at Grace and the approximate dates you held 19 each position? 20 A. When I was hired, I held the position of 21 senior litigation counsel and I became assistant 22 general counsel for litigation in -- it was 23 around March of 2006. 24 Q. Is that your present position?</p>

2 (Pages 2 to 5)

<p style="text-align: right;">Page 6</p> <p>1 A. Yes.</p> <p>2 Q. When you initially went to work at Grace,</p> <p>3 who did you report to?</p> <p>4 A. I reported to Robert Beber, B-e-b-e-r.</p> <p>5 Q. And how long did you report to Mr. Beber?</p> <p>6 A. Until he retired. He was general counsel</p> <p>7 of W. R. Grace. When he retired, I frankly don't</p> <p>8 recall the year or the date.</p> <p>9 Q. Who did you report to between the</p> <p>10 retirement of Mr. Beber and Mr. Shelnitz taking</p> <p>11 over as general counsel?</p> <p>12 A. I reported to David Siegel, S-i-e-g-e-l,</p> <p>13 who became general counsel after Mr. Beber.</p> <p>14 Q. Were you reporting to Mr. Siegel when</p> <p>15 Grace filed its petition for reorganization?</p> <p>16 A. Yes.</p> <p>17 MS. GRIFFIN: May I interrupt? I</p> <p>18 apologize. I'm Shannon Griffin with O'Melveny &amp;</p> <p>19 Myers. I represent Arrowwood Indemnity. And I</p> <p>20 thought we were going to do introductions. So I</p> <p>21 apologize for the interruption.</p> <p>22 But I would like to enter an exhibit</p> <p>23 before we take off on Arrowwood's objections,</p> <p>24 which were filed last night. Everyone should</p>	<p style="text-align: right;">Page 8</p> <p>1 in the objection.</p> <p>2 And to the extent that the debtor</p> <p>3 implied on Friday that this was the one and only</p> <p>4 time that this witness would be provided, we</p> <p>5 object to any implication of that sort and</p> <p>6 reserve our rights to take another deposition as</p> <p>7 required.</p> <p>8 MS. SIMON: And my clients, Firemen's</p> <p>9 Fund Insurance Company, also joins in the</p> <p>10 objections and reserves its rights to depose the</p> <p>11 deponent at that time, if necessary.</p> <p>12 MR. SPENCER: Continental Casualty</p> <p>13 also joins in the objection and reserves its</p> <p>14 rights as stated by all other counsel previously.</p> <p>15 MS. ESAYIAN: From the debtor's</p> <p>16 perspective, everyone's reservations of rights</p> <p>17 are noted and I believe our position was clearly</p> <p>18 stated on Friday. And I won't take more time</p> <p>19 here.</p> <p>20 BY MR. SPEIGHTS:</p> <p>21 Q. Mr. Finke, were your general duties and</p> <p>22 responsibilities the same from 1989 until the</p> <p>23 bankruptcy?</p> <p>24 A. Yes.</p>
<p style="text-align: right;">Page 7</p> <p>1 have received a copy. And I have copies for</p> <p>2 everybody here. But I would like to mark this as</p> <p>3 Exhibit 1 so I don't have to keep objecting</p> <p>4 throughout.</p> <p>5 MR. SPEIGHTS: I have not seen it so</p> <p>6 I would like to see it before you mark it.</p> <p>7 MS. GRIFFIN: Sure.</p> <p>8 (Finke Deposition Exhibit No. 1 was</p> <p>9 marked for identification.)</p> <p>10 MR. SPEIGHTS: Although it's normal</p> <p>11 for a party to mark its exhibits during its own</p> <p>12 examination, I certainly don't object to counsel</p> <p>13 marking it now to avoid having to state these</p> <p>14 same objections orally or restate them</p> <p>15 innumerable times.</p> <p>16 MS. GRIFFIN: Thank you.</p> <p>17 MR. BROWN: While we are doing that,</p> <p>18 so that we can avoid it. My clients, Government</p> <p>19 Employees Insurance Company, Columbia Insurance</p> <p>20 Company and Seaton Insurance Company and One</p> <p>21 Beacon America Insurance Company, join in those</p> <p>22 objections.</p> <p>23 MS. ALCABES: My clients as well,</p> <p>24 Travelers Casualty &amp; Surety Company, also joins</p>	<p style="text-align: right;">Page 9</p> <p>1 Q. Can you generally describe what your</p> <p>2 duties and responsibilities were during that</p> <p>3 period?</p> <p>4 A. Primarily, I was responsible for</p> <p>5 oversight and management of asbestos property</p> <p>6 damage cases, including reporting to Grace</p> <p>7 management on the status or developments in those</p> <p>8 cases.</p> <p>9 I also was responsible for oversight</p> <p>10 of expert witnesses that Grace retained or</p> <p>11 Grace's counsel retained to testify in the</p> <p>12 asbestos property damage litigation.</p> <p>13 Q. Were you part of a, for lack of a better</p> <p>14 term, a team of lawyers working under Mr. Beber?</p> <p>15 A. Yes.</p> <p>16 Q. And what did you call the team?</p> <p>17 A. Just the asbestos litigation group</p> <p>18 informally.</p> <p>19 Q. When a case was filed against Grace, how</p> <p>20 was it decided which member of the group would be</p> <p>21 responsible for that case?</p> <p>22 A. Early in the process or shortly after the</p> <p>23 team was formed, the caseload was divided</p> <p>24 geographically so that each person of the team</p>

W.R. Grace & Co., et al.  
 RICHARD CHARLES FINKE

Page 10	Page 12
<p>1 was responsible for cases filed within certain  2 states.  3 Q. For example, you got North Dakota?  4 A. Yes, I did.  5 Q. Who had South Carolina?  6 A. Amy Klein.  7 Q. And after her untimely death, who had  8 South Carolina?  9 A. Correct.  10 Q. Who did?  11 A. I did. I'm sorry.  12 Q. Do you remember about when that was?  13 A. No, offhand, I don't.  14 I'm sorry. I take it back. Another  15 attorney, Jerry Sheinman, took over for Amy after  16 she passed away. And I then took over for Jerry.  17 Q. Do you know whether you took over on or  18 after Anderson Memorial filed its case in  19 December of 1992?  20 A. It would have been after.  21 Q. Would Jerry Sheinman have been the  22 attorney responsible for Anderson when it was  23 originally filed?  24 A. No, I believe Amy Klein was responsible</p>	<p>1 A. Yes. A paralegal.  2 Q. Who was that?  3 A. Her first name was Gail. And her last  4 name will come to me. But she has been -- she  5 has not been with the company for quite a while.  6 I don't recall her last name.  7 Q. And if you recall it during the  8 deposition, just stop me and say I'm now  9 recalling.  10 Would you review the pleadings as  11 they were filed in the case?  12 A. Yes.  13 Q. Would you have regular contact with the  14 lawyer assigned to the case; that is, litigation  15 counsel?  16 A. You're referring to outside counsel?  17 Q. Outside counsel. In this case,  18 Mr. Plunkett?  19 A. Yes. Yes, I would have regular contact  20 with him or his members of his staff.  21 Q. In addition to telephone calls with  22 outside counsel, did you have correspondence or  23 e-mails with outside counsel?  24 A. Yes.</p>
Page 11	Page 13
<p>1 at that time.  2 Q. Let me take a case as an example and kind  3 of walk through it as a means of understanding  4 what you did.  5 I believe you were responsible for  6 the Montana/Dakota Utilities lawsuit filed in  7 North Dakota, which we referred to as MDU, is  8 that correct?  9 A. Yes.  10 Q. When that case was filed, of course, it  11 was assigned to you because it was a North Dakota  12 case, did you open a file?  13 A. Yes.  14 Q. Where was the file maintained?  15 A. In Boca Raton, where the litigation group  16 was based.  17 Q. Did you receive copies of the various  18 pleadings that were filed in that case?  19 A. Yes.  20 Q. And would you file those in your file at  21 Boca Raton?  22 A. Yes.  23 Q. Was somebody responsible for doing the  24 filing?</p>	<p>1 Q. Would a copy of the correspondence have  2 been maintained in the file?  3 A. Yes.  4 Q. How about e-mails? Would you have kept  5 those in the file?  6 A. To the extent we had e-mails then, and I  7 frankly don't recall at what point we started  8 using e-mail; and, if I had printed out hard  9 copies, they would have been maintained in the  10 file, yes.  11 Q. Where would the MDU file be today?  12 A. Probably in storage, in a facility in  13 Miami. Although the trial transcript is  14 maintained in the Boca Raton office.  15 Q. Do you maintain all trial transcripts in  16 the Boca Raton office of PD cases?  17 A. Yes.  18 Q. How about depositions taken in the MDU  19 case, expert or lay, do you maintain copies at  20 Boca?  21 A. Expert deposition transcripts would be  22 maintained and are maintained in the Boca Raton  23 office. Case specific transcripts would most  24 likely be with the case file, which I believe</p>

Page 14	Page 16
<p>1 would be in storage.</p> <p>2 Q. Who is responsible for that storage? Is</p> <p>3 that an outside vendor?</p> <p>4 A. Yes. Iron Mountain.</p> <p>5 Q. Were you aware that Anderson was filed in</p> <p>6 1992 even though it was not assigned to you at</p> <p>7 that time?</p> <p>8 A. Yes.</p> <p>9 Q. Was it a case that generated some</p> <p>10 discussion among the group?</p> <p>11 A. Yes.</p> <p>12 Q. Was it a case that was discussed, not</p> <p>13 only among the group, but with Mr. Beber as well?</p> <p>14 A. Yes.</p> <p>15 Q. Would it be fair to say it was not just</p> <p>16 another case?</p> <p>17 A. Yes, I think that's fair.</p> <p>18 Q. Were you assigned to particular experts</p> <p>19 during this period of time before the bankruptcy?</p> <p>20 A. Yes.</p> <p>21 Q. Which experts were you assigned to or</p> <p>22 which experts were assigned to you I suppose is</p> <p>23 correct as well?</p> <p>24 A. In general, I was responsible for what we</p>	<p>1 to me right now.</p> <p>2 Q. How about Steve Hayes?</p> <p>3 A. Yes, Steve Hayes would be another.</p> <p>4 Q. And did you generally attend the</p> <p>5 depositions of these plaintiffs' experts even</p> <p>6 when they testified in cases that had not been</p> <p>7 assigned to you?</p> <p>8 A. In general, yes.</p> <p>9 Q. Now, when you attended a deposition such</p> <p>10 as a deposition of Dr. Longo, I think you</p> <p>11 attended a few of them, did you prepare any sort</p> <p>12 of report of the deposition?</p> <p>13 A. Generally, no.</p> <p>14 Q. Did you take notes during the deposition?</p> <p>15 A. Yes.</p> <p>16 Q. What would you do with your notes?</p> <p>17 A. I would put -- either put the notes in a</p> <p>18 file or do a memo to the file of any salient</p> <p>19 points or novel points that were raised during</p> <p>20 the deposition that might be of use in future</p> <p>21 depositions.</p> <p>22 Q. And those memos would go in the file as</p> <p>23 well?</p> <p>24 A. Yes.</p>
Page 15	Page 17
<p>1 referred to as the scientific and technical</p> <p>2 experts. Those included Dr. Richard Lee,</p> <p>3 Dr. Morton Corn, Charles Blake, Roger Morse.</p> <p>4 From time to time, we did use other industrial</p> <p>5 hygiene experts, although I don't recall names</p> <p>6 right now.</p> <p>7 Q. Would you attend depositions of these</p> <p>8 experts on occasion when they were being deposed</p> <p>9 in cases which were not assigned to you?</p> <p>10 A. Yes.</p> <p>11 Q. Would you attend all of their</p> <p>12 depositions?</p> <p>13 A. Nearly all of them.</p> <p>14 Q. Which plaintiffs' experts were assigned</p> <p>15 to you?</p> <p>16 A. The plaintiffs' experts in the same field</p> <p>17 and they included Dr. William Longo, Dr. James</p> <p>18 Millette, Richard Hatfield, William Ewing, Dale</p> <p>19 Keyes, K-e-y-e-s, Dr. Arthur Rohl, R-o-h-l. And,</p> <p>20 again, there were others. I remember a gentleman</p> <p>21 named I believe last name Mayer, M-a-y-e-r.</p> <p>22 Q. Dave Mayer?</p> <p>23 A. Yes. There were probably a few others in</p> <p>24 those fields. But, again, the names don't come</p>	<p>1 Q. And are we now talking about files</p> <p>2 organized by expert?</p> <p>3 A. Yes.</p> <p>4 Q. And I believe we said this. But those</p> <p>5 files would still be at Boca?</p> <p>6 A. That's correct.</p> <p>7 Q. And when you did these memos on those</p> <p>8 occasions that you did memos, would you copy the</p> <p>9 other members of the team?</p> <p>10 A. No, not typically.</p> <p>11 Q. Did you have any involvement with Grace</p> <p>12 insurance issues before the bankruptcy?</p> <p>13 A. No.</p> <p>14 Q. Who did?</p> <p>15 A. Mr. Beber and an employee named Jeff</p> <p>16 Posner was involved or I should say in charge of</p> <p>17 risk management at the time.</p> <p>18 Q. Is he still with Grace?</p> <p>19 A. He is not. But he is a consultant to</p> <p>20 Grace.</p> <p>21 Q. Where is he located?</p> <p>22 A. In Florida. South Florida.</p> <p>23 Q. Did you have any involvement with the</p> <p>24 Safe Buildings Alliance or the SBA before the</p>

Page 174	Page 176
<p>1 <b>A. Pre-petition or post-petition?</b></p> <p>2 Q. Post-petition we are talking about. As</p> <p>3 you were describing his role in the negotiations.</p> <p>4 <b>A. I don't know.</b></p> <p>5 Q. And was your role in dealing with PI</p> <p>6 issues and the resolution of PI issues indirect</p> <p>7 in the sense that Mr. Hughes reported to you or</p> <p>8 did you have any direct involvement?</p> <p>9 <b>A. It was really indirect.</b></p> <p>10 Q. And besides Mr. Hughes, who else was</p> <p>11 involved in that effort on the Grace side?</p> <p>12 <b>A. Mark Shelnitz, the general counsel.</b></p> <p>13 <b>Robert Tarola.</b></p> <p>14 Q. I'm sorry?</p> <p>15 <b>A. Robert Tarola, T-a-r-o-l-a, the former</b></p> <p>16 <b>CFO. The CEO, Fred Festa, had some involvement.</b></p> <p>17 <b>And outside counsel, David Bernick. And I</b></p> <p>18 <b>believe — I don't know if Ted Freedman was</b></p> <p>19 <b>involved with the negotiations or came in after a</b></p> <p>20 <b>deal had been reached.</b></p> <p>21 Q. Other than the individuals you have just</p> <p>22 run through on the Grace side, was there anyone</p> <p>23 else that you can recall that was on the Grace</p> <p>24 negotiating team for the resolution of the PI</p>	<p>1 the issue pre-petition. Have you had any role or</p> <p>2 did you have any role in connection with Grace's</p> <p>3 liability insurance program before the petition</p> <p>4 date?</p> <p>5 <b>A. No.</b></p> <p>6 Q. Who was responsible for this at Grace?</p> <p>7 <b>A. Bob Beber handled it from the litigation</b></p> <p>8 <b>standpoint. And Jeff Posner was in charge of our</b></p> <p>9 <b>risk management function, including insurance.</b></p> <p>10 Q. When did Mr. Posner leave Grace?</p> <p>11 <b>A. I honestly don't know. I don't recall.</b></p> <p>12 Q. Was it after the petition date?</p> <p>13 <b>A. I believe it was before.</b></p> <p>14 Q. And his title immediately before he left</p> <p>15 was risk manager?</p> <p>16 <b>A. I don't know.</b></p> <p>17 Q. But that's the function that he had, was</p> <p>18 risk manager for Grace?</p> <p>19 <b>A. Yes.</b></p> <p>20 Q. Post-petition, have you had any role in</p> <p>21 connection with Grace's liability insurance</p> <p>22 program?</p> <p>23 <b>A. A limited one. Limited to the extent of</b></p> <p>24 <b>motions that have been made or objections</b></p>
Page 175	Page 177
<p>1 claims?</p> <p>2 <b>A. Pam Zilly was involved in some of the</b></p> <p>3 <b>discussions as well. She is with Blackstone.</b></p> <p>4 <b>She is our financial advisor.</b></p> <p>5 Q. What was her role?</p> <p>6 <b>A. Beyond being financial adviser, I don't</b></p> <p>7 <b>know. I wasn't directly involved.</b></p> <p>8 Q. What was Mr. Festa's role?</p> <p>9 <b>A. I think primarily to ensure that the</b></p> <p>10 <b>other parties understood that the Grace</b></p> <p>11 <b>representatives there spoke with the full</b></p> <p>12 <b>authority of the company, but, again, I was not</b></p> <p>13 <b>present at the meetings and discussions that he</b></p> <p>14 <b>attended with the personal injury</b></p> <p>15 <b>representatives.</b></p> <p>16 Q. Were you at any of the meetings with the</p> <p>17 personal injury representatives?</p> <p>18 <b>A. No.</b></p> <p>19 Q. I gather Mr. Hughes was?</p> <p>20 <b>A. I believe he was, yes.</b></p> <p>21 Q. And Mr. Shelnitz?</p> <p>22 <b>A. Yes.</b></p> <p>23 Q. Okay. I want to shift gears for a second</p> <p>24 and turn to insurance. And, again, looking at</p>	<p>1 asserted by insurance. To the extent an issue is</p> <p>2 being litigated, I have been involved in</p> <p>3 reviewing motion papers and related documents,</p> <p>4 participating in conference calls on strategy.</p> <p>5 Q. For dealing with the insurance?</p> <p>6 <b>A. For dealing with the insurance. Some of</b></p> <p>7 <b>the insurance issues. Certainly not all of them.</b></p> <p>8 Q. Can you tell me which issues you're</p> <p>9 talking about?</p> <p>10 <b>A. Issues related to the claims by Kenneb</b></p> <p>11 <b>pipeline that they believe they are entitled to</b></p> <p>12 <b>insurance coverage. In connection with</b></p> <p>13 <b>remediation costs or potential responsibility for</b></p> <p>14 <b>remediation costs in connection with the Otis</b></p> <p>15 <b>pipeline.</b></p> <p>16 <b>There were a few others. I'm just</b></p> <p>17 <b>drawing a blank right now.</b></p> <p>18 Q. Have you had any role in the Scotts</p> <p>19 adversary proceeding?</p> <p>20 <b>A. Yes. Thank you. Yes, I have reviewed</b></p> <p>21 <b>the papers, not that there have been much —</b></p> <p>22 <b>there has been much recently. But I did review</b></p> <p>23 <b>the adversary proceeding papers when Scotts first</b></p> <p>24 <b>commenced its adversary proceeding. And, again,</b></p>

W.R. Grace & Co., et al.  
 RICHARD CHARLES FINKE

<p style="text-align: right;">Page 178</p> <p>1 participated in conference calls relating to</p> <p>2 their claim that they are entitled to coverage.</p> <p>3 Q. And with whom were these conference calls</p> <p>4 that you participated?</p> <p>5 A. Outside counsel from Kirkland &amp; Ellis.</p> <p>6 And Mr. Posner is often on those calls. I think</p> <p>7 that's -- and it's usually the same group.</p> <p>8 Q. Did you play any role in the manner in</p> <p>9 which insurance is handled under the plan?</p> <p>10 A. No.</p> <p>11 Q. Who did?</p> <p>12 A. Other than Kirkland &amp; Ellis, I don't know</p> <p>13 who else was involved.</p> <p>14 Q. Other than what you have just described,</p> <p>15 have you had any role in the manner in which</p> <p>16 insurance, unsettled insurance, is handled under</p> <p>17 the plan?</p> <p>18 A. No.</p> <p>19 Q. How about any role in connection with the</p> <p>20 manner in which settled insurance is handled</p> <p>21 under the plan?</p> <p>22 A. No.</p> <p>23 Q. Did anyone replace Mr. Posner as the risk</p> <p>24 manager?</p>	<p style="text-align: right;">Page 180</p> <p>1 But I don't think that I did.</p> <p>2 Q. Do you know, if it wasn't you, do you</p> <p>3 know who was involved at Grace in the preparation</p> <p>4 of this document?</p> <p>5 And just for clarification, it's an</p> <p>6 8-K. It has attachments to it. You probably</p> <p>7 noted.</p> <p>8 A. Right.</p> <p>9 Q. One is a pre release and the other is a</p> <p>10 terms sheet. So we can probably take -- why</p> <p>11 don't we take them one by one.</p> <p>12 A. Typically, the 8-K's are prepared by an</p> <p>13 in-house attorney, Michael Conron, who obtains</p> <p>14 input and facts from persons who are involved</p> <p>15 firsthand with the events being reported. In</p> <p>16 this case, I believe he would have obtained the</p> <p>17 details from Mark Shelnitz since Mr. Shelnitz was</p> <p>18 personally involved in the negotiations.</p> <p>19 Q. Did he receive any information from you?</p> <p>20 A. No.</p> <p>21 Q. Okay. How about the press release that's</p> <p>22 attached to it? There is a couple of names at</p> <p>23 the top from media relations and investor</p> <p>24 relations. But do you know who prepared the</p>
<p style="text-align: right;">Page 179</p> <p>1 A. No. He basically still serves the same</p> <p>2 function but as an outside consultant.</p> <p>3 Q. Okay. Thank you.</p> <p>4 (Finke Deposition Exhibit No. 12</p> <p>5 was marked for identification.)</p> <p>6 BY MR. BROWN:</p> <p>7 Q. Mr. Finke, you have what's been marked</p> <p>8 Exhibit 12. If you would take a few moments to</p> <p>9 look at it. My first question is going to be</p> <p>10 whether you have ever seen it before?</p> <p>11 A. Yes, I have seen it before.</p> <p>12 Q. Can you identify it for me?</p> <p>13 A. It's Form 8K that Grace filed with the</p> <p>14 SEC announcing its agreement in principle with</p> <p>15 the personal injury committee and others to</p> <p>16 resolve present and future asbestos related PI</p> <p>17 claims.</p> <p>18 Q. When did you first see it?</p> <p>19 A. I believe it was shortly after it was</p> <p>20 filed. A day or two after it was filed.</p> <p>21 Q. Had you seen drafts of it before it was</p> <p>22 filed?</p> <p>23 A. I don't believe I did. But I -- I cannot</p> <p>24 be a hundred percent sure I didn't see a draft.</p>	<p style="text-align: right;">Page 181</p> <p>1 press release?</p> <p>2 A. Where are you at? I'm not finding it.</p> <p>3 Q. I think it's probably page five it starts</p> <p>4 at.</p> <p>5 A. Okay. Okay. There we go. William</p> <p>6 Corcoran is -- I forget if he is executive</p> <p>7 vice-president or senior vice-president. And he</p> <p>8 is in charge of media relations, among other</p> <p>9 things. Typically, Mr. Corcoran prepares press</p> <p>10 releases. In the same manner as I described, I</p> <p>11 described Mr. Conron preparing 8-K's. He would</p> <p>12 have obtained the information from whoever was</p> <p>13 personally involved.</p> <p>14 Q. And would that have been Mr. Shelnitz or</p> <p>15 someone else?</p> <p>16 A. I'm pretty confident it would have been</p> <p>17 Mr. Shelnitz.</p> <p>18 Q. But it was not you?</p> <p>19 A. Correct.</p> <p>20 Q. Let's go to the terms sheet, which</p> <p>21 appears to begin on page eight.</p> <p>22 A. Um-hmm.</p> <p>23 Q. Had you seen this terms sheet prior to</p> <p>24 the filing of the 8-K?</p>



Page 182	Page 184
<p>1 A. I believe I did.</p> <p>2 Q. When?</p> <p>3 A. I think I saw it in a prior draft.</p> <p>4 Within a few days of the final, the final</p> <p>5 version.</p> <p>6 Q. Were you involved in preparing any of the</p> <p>7 drafts?</p> <p>8 A. No, I was not.</p> <p>9 Q. Do you know who was?</p> <p>10 A. No, I don't. I believe Mr. Shelnitz was</p> <p>11 involved along with outside counsel.</p> <p>12 Q. How about Mr. Hughes?</p> <p>13 A. I don't know.</p> <p>14 Q. Do you know who was involved for the</p> <p>15 other constituencies that are a party to the</p> <p>16 terms sheet?</p> <p>17 A. No, I do not.</p> <p>18 Q. In the first line of the text, it says,</p> <p>19 this term sheet sets forth certain of the</p> <p>20 principal terms and conditions.</p> <p>21 Are there other principal terms and</p> <p>22 conditions that are not reflected or were not</p> <p>23 reflected in the terms sheet?</p> <p>24 A. I don't know. I wasn't involved in the</p>	<p>1 consent of any of its insurers prior to agreeing</p> <p>2 to that term with the other constituencies to the</p> <p>3 terms sheet?</p> <p>4 A. I don't know.</p> <p>5 Q. Who would know?</p> <p>6 A. Mr. Shelnitz.</p> <p>7 Q. If you turn to the next page on page nine</p> <p>8 under v. I want to direct your attention to the</p> <p>9 second paragraph that begins with the word,</p> <p>10 provided.</p> <p>11 A. Okay.</p> <p>12 Q. Do you understand what's being referred</p> <p>13 to in that section?</p> <p>14 A. No, I'm not sure what's being referred to</p> <p>15 by the foregoing.</p> <p>16 (Finke Deposition Exhibit Nos. 13 and</p> <p>17 14 were marked for identification.)</p> <p>18 BY MR. BROWN:</p> <p>19 Q. Mr. Finke, you have two documents that</p> <p>20 have been marked Exhibit 13 and one is Exhibit 14</p> <p>21 in front of you. Can you just identify them both</p> <p>22 for me?</p> <p>23 A. Exhibit 13 is debtor's preliminary list</p> <p>24 of witnesses that they intend to call during the</p>
Page 183	Page 185
<p>1 discussions. I don't know if there were other</p> <p>2 principal terms and conditions that have been</p> <p>3 agreed upon at that time and not included.</p> <p>4 Q. Were any of Grace's insurers involved in</p> <p>5 the discussions that led up to the execution of</p> <p>6 the terms sheet?</p> <p>7 A. Not to my knowledge. But, again, I</p> <p>8 wasn't personally involved in the discussions.</p> <p>9 Q. Do you know whether Grace's insurers were</p> <p>10 purposely left out of any discussions leading up</p> <p>11 to the terms sheet?</p> <p>12 A. Not that I know of.</p> <p>13 Q. Who would be the individual at Grace, to</p> <p>14 your knowledge, that would know the answer to</p> <p>15 those questions?</p> <p>16 A. Mr. Shelnitz.</p> <p>17 Q. If you look on the first page down at</p> <p>18 I.A.1.b, titled, Insurance?</p> <p>19 A. Yes.</p> <p>20 Q. There is a reference there to the</p> <p>21 assignment of insurance policies and all</p> <p>22 insurance proceeds. Do you see that?</p> <p>23 A. Yes.</p> <p>24 Q. Did Grace, to your knowledge, seek the</p>	<p>1 confirmation hearing and is dated March 13, 2009.</p> <p>2 Exhibit 14 is the second amended case</p> <p>3 management order related to the first amended</p> <p>4 joint plan of reorganization and was ordered on</p> <p>5 January 29, 2009.</p> <p>6 Q. Would I be correct if I said that you</p> <p>7 have seen both of these documents before?</p> <p>8 A. Yes, you would.</p> <p>9 Q. If you look at the witness list, you'll</p> <p>10 note that your name appears first?</p> <p>11 A. Yes.</p> <p>12 Q. As someone who, at least on a preliminary</p> <p>13 basis, is going to testify in Phases I and II of</p> <p>14 the confirmation hearing?</p> <p>15 A. Um-hmm.</p> <p>16 Q. About company information.</p> <p>17 What is the company information that</p> <p>18 you possess relevant to plan confirmation?</p> <p>19 MS. ESAYIAN: Objection to the form</p> <p>20 of the question. You can answer, if you can.</p> <p>21 THE WITNESS: I was asked by outside</p> <p>22 counsel to be available to testify at one or both</p> <p>23 of the confirmation hearings to the extent they</p> <p>24 needed someone to present their basic company</p>

47 (Pages 182 to 185)

W.R. Grace & Co., et al.  
 RICHARD CHARLES FINKE

<p style="text-align: right;">Page 186</p> <p>1 information, such as anything from the nature of          2 our businesses to number of employees and more          3 specifically with respect to our asbestos          4 litigation and claims, both historical, meaning          5 pre-petition litigation history relating to          6 asbestos claims, as well as the asbestos related          7 claims filed in the Chapter 11.          8 The only thing I wanted to add was,          9 in a subsequent discussion, it was decided that          10 Jay Hughes would most likely handle any issues          11 relating or testimony relating to personal          12 injury -- asbestos personal injury claims and          13 issues.          14 BY MR. BROWN:          15 Q. That was going to be my question. You          16 used the generic term asbestos litigation. Did          17 you mean PD asbestos litigation?          18 A. Well, initially the discussion was          19 generic. But, as I say, subsequently it was          20 narrowed to property damage and attic insulation          21 within my purview.          22 Q. To your knowledge, you're not going to be          23 proffering any testimony on PI issues?          24 A. That is my understanding, yes.</p>	<p style="text-align: right;">Page 188</p> <p>1 second phase of the confirmation hearing, are          2 you, to your knowledge, being proffered to offer          3 any testimony with respect to i or iii?          4 A. I think that's unknown at this point.          5 Q. Is that true for both i and iii?          6 A. Yes.          7 Q. Okay. I want to go back to the          8 preliminary witness list. And I think most of          9 these individuals on here we have already          10 identified in terms of what their acknowledge is.          11 Pam Zilly, she is with the Blackstone Group, she          12 is the financial person?          13 A. Correct.          14 Q. I believe you said Denise Martin is a PD          15 expert?          16 A. Yes, she is an expert. She'll offer          17 expert testimony concerning the likelihood that          18 future property damage and ZAI claims will be          19 brought.          20 Q. Okay. I believe I heard earlier the name          21 Hudson LaForce. Who is that?          22 A. He is our current chief financial          23 officer.          24 Q. And Derrick Tay?</p>
<p style="text-align: right;">Page 187</p> <p>1 Q. Would your answer be the same with          2 respect to insurance related issues?          3 A. Yes.          4 Q. How about with the manner in which          5 indirect asbestos PI trust claims are handled          6 under the plan?          7 A. I would expect that Jay Hughes would          8 handle that.          9 Q. Okay. If you can look at what's been          10 marked as Exhibit 14, the second amended case          11 management order. I want to direct your          12 attention specifically to paragraph two.          13 The second sentence in paragraph two          14 talks about the first phase of the confirmation          15 hearing. Do you see that?          16 A. Yes.          17 Q. And there are three Romanettes in that          18 sentence.          19 Do I understand you correctly that          20 you are not, to your knowledge, being proffered          21 to offer any testimony relevant to i or ii?          22 A. That's correct.          23 Q. And if you go to the next sentence, which          24 talks about the topics to be addressed in the</p>	<p style="text-align: right;">Page 189</p> <p>1 A. He is a Canadian restructuring attorney          2 who represents Grace in Canada concerning the          3 Canadian ZAI claimants.          4 Q. And Mr. Dunbar, he is an outside          5 modelling consultant?          6 A. Yes, I believe that's right.          7 Q. Mr. Hughes we have talked about.          8 What about all the doctors?          9 A. Can you be more specific what you're          10 asking?          11 Q. What's the area? Have each of the other          12 witnesses listed here starting with I guess          13 Dr. Florence, are they all experts?          14 A. Other than Jay Hughes, yes.          15 Q. And they have all submitted reports at          16 this point?          17 A. I presume so.          18 (Finke Deposition Exhibit No. 15 was          19 marked for identification.)          20 BY MR. BROWN:          21 Q. All right. Mr. Finke, you have before          22 you a document marked Exhibit 15. The first          23 question is, can you identify it?          24 A. Exhibit 15 is debtors' response to</p>